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Message Text

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PAGE 01 MADRID 07037 01 OF 02 101644Z

43
ACTION EUR-12

INFO OCT-01 ARA-06 IO-10 ISO-00 EURE-00 CIAE-00 DODE-00

PM-04 H-02 INR-07 L-03 NSAE-00 NSC-05 PA-01 PRS-01

SP-02 SS-15 USIA-06 SCCT-01 SAM-01 /077 W
---------- 068192
P R 101515Z OCT 75
FM AMEMBASSY MADRID
TO SECSTATE WASHDC PRIORITY 3227
INFO AMEMBASSY LISBON
AMEMBASSY LONDON
AMEMBASSY PARIS
AMEMBASSY ROME
AMEMBASSY BRUSSELS
AMEMBASSY THE HAGUE
AMEMBASSY STOCKHOLM
AMEMBASSY COPENHAGEN
AMEMBASSY LUXENBOURG
AMEMBASSY HELSINKI
AMEMBASSY VIENNA
AMEMBASSY OSLO
AMEMBASSY BERN
AMEMBASSY DUBLIN
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E.O. 11652: N/A
TAGS: PINT, PFOR, SP
SUBJ: TERRORISM: FOREIGN MINISTRY NOTE ON BACKGROUND OF EXECUTIONS
OF FIVE TERRORISTS
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PAGE 02 MADRID 07037 01 OF 02 101644Z

Margaret P. Grafeld Declassified/Released US Department of State EO Systematic Review 06 JUL 2006

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REF: MADRID 6030

SUMMARY: THE MFA SENT EMBASSY A NOTE VERBALE REQUESTING THAT IT INFORM THE U.S. GOVT ABOUT THE TRIALS AND SENTENCES OF 11 TERRORISTS OF WHOM FIVE WERE SUBSEQUENTLY EXECUTED. THE NOTE INCLUDES AN 11-PAGE MEMORANDUM ON THE JUDICIAL PROCESS FOLLOWED, THE ACCUSATIONS AGAINST THE CONVICTED TERRORISTS, AN EXPLANATION FOR THE MILITARY COURT MARTIALS, A JUSTIFICATION FOR THE SUMMARY CHARACTER OF THE TRIALS, AND THE INCIDENTS WHICH TOOK PLACE. THE NOTE ALSO ATTACHES A LIST OF 22 POLICEMEN KILLED BY ASSASSINS BETWEEN APRIL 1974 AND OCTOBER 1, 1975 PLUS 14 CIVILIANS KILLED DURING THE SAME PERIOD, AS WELL AS A LISTING OF 17 POLICEMEN AND 7 CIVILIANS INJURED DURING ASSASSINATION ATTEMPTS. END SUMMARY

1. EMBASSY RECEIVED NOTE VERBALE FROM FOREIGN MINISTRY OCTOBER 7 WHICH HAS BEEN CIRCULATED TO OTHER EMBASSIES. IT CONSISTS OF BRIEF INTRODUCTORY STATEMENT PLUS LENGTHY MEMORANDUM AND LIST OF NAMES OF POLICEMEN AND CIVILIANS WHO HAVE BEEN VICTIMS OF TERRORIST ATTACKS SINCE EARLY 1974. EMBASSY IS POUCHING THE SPANISH ORIGINAL TOGETHER WITH AN INFORMAL TRANSLATION TO THE DEPARTMENT.

2. THE MFA STATES IN COVERING NOTE THAT THE ATTACHED MEMORANDUM PROVIDES "OBJECTIVE AND TRUE INFORMATION" ABOUT FACTS AND TRIALS, RESULTING IN THE COMMUTATIONS OF SIX DEATH SENTENCES AND THE EXECUTION OF FIVE TERRORISTS. THE MFA ASKS THE EMBASSY TO FORWARD THE REPORT TO THE USG SO THAT IT HAS OFFICIAL INFORMATION TO COMPARE WITH REPORTS CIRCULATED BY MEDIA WHICH HAVE LED IN CERTAIN INSTANCES TO PUBLIC AND DIPLOMATIC INITIATIVES DETRIMENTAL TO SPAIN'S INTERNATIONAL RELATIONS.

3. THE REPORT OPENS WITH STATEMENT THAT ACCUSATIONS AGAINST SPANISH JUSTICE HAVE BEEN BASED ON A LACK OF INFORMATION AND DISTORTION OF THE TRUTH STEMMING FROM MEDIA REPORTS AND, IN SOME CASES, FOREIGN GOVTS THEMSELVES. IT ACCUSES FOREIGN CORRESPONDENTS OF HAVING SOUGHT INFORMATION ABOUT THE TRIALS EXCLUSIVELY FROM SOURCES CLOSE TO THE DEFENSE WITHOUT INVESTIGATING
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SOURCES CLOSER TO THE FACTS WHO HAVE AN UNDERSTANDING OF SPANISH LEGAL PROCEDURES. THE NOTE STATES THAT FOREIGN CAMPAIGN OF TOLERANCE AND SUPPORT FOR TERRORISM IS CONTRARY TO THE COMMITMENTS MADE AT THE CSCE SIGNED IN HELSINKI NOT TO INTERVENE IN THE INTERNAL AFFAIRS OF OTHER COUNTRIES, ESPECIALLY IN MATTERS OF TERRORISM.

4. THE CHARGES: TO CONSIDER PREMEDITATED AND

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TREACHEROUS ASSASSINATION OF POLICE A POLITICAL ACT IS EVIDENCE OF BAD FAITH. ALL LEGAL SYSTEMS CONSIDER AS THE AUTHORS OF A CRIME THOSE WHO COOPERATE IN CARRYING IT OUT. THE NOTE STATES THAT IN NO CASE WAS A MERE ACCOMPLICE SENTENCED TO DEATH. OF THE FIVE EXECUTED, THREE PERFORMED THE ACT, THE TWO OTHERS ORGANIZED AND MADE POSSIBLE TWO OF THE ASSASSINATIONS.

5. MILITARY JURISDICTION: MILITARY TRIBUNALS HAVE BEEN USED IN SPAIN IN ACCORDANCE WITH THE CODE OF MILITARY JUSTICE PUBLISHED IN 1945 WHICH CONTAINS ALL THE MAIN DISPOSITIONS OF THE MILITARY CODE ADOPTED IN 1890. MILITARY JURISDICTION WAS FOLLOWED THROUGHOUT THE PERIOD OF THE SPANISH REPUBLIC AND DURING THE CIVIL WAR BY BOTH SIDES. MILITARY JURISDICTION HAS ALWAYS CO-EXISTED ALONGSIDE ORDINARY JURISDICTION. THE LAW OF NOVEMBER 15, 1971, WHICH REFORMED THE CODE OF MILITARY JUSTICE, ADDED A CHAPTER ENTITLED "TERRORISM" WITH FIVE ARTICLES, THE FIRST THREE OF WHICH DEFINED THE CRIMES WHICH WOULD BE JUDGED BY MILITARY TRIBUNALS. THE DECREE/LAW ADOPTED AUGUST 26, 1975, ON THE PREVENTION OF TERRORISM INTRODUCES THE PROVISION FOR THE DEATH PENALTY IN THE CASE OF THE ASSASSINATION OF MEMBERS OF THE ARMED FORCES AND FORCES OF PUBLIC ORDER (REFTEL).

6. SUMMARY TRIAL: SUMMARY TRIAL IS PROVIDED UNDER THE CODE OF MILITARY JUSTICE IN CASES OF CRIMES BEING COMMITTED OR WHICH HAVE JUST BEEN COMMITTED BY A SUSPECT AT THE MOMENT THAT HE IS ARRESTED. A SUMMARY TRIAL INVOLVES A SPEEDING UP OF THE TRIAL PROCEDURES UNDER ORDINARY JUSTICE AND A FINAL SENTENCE WHICH CANNOT BE APPEALED. UNDER THE ANTI-TERRORIST DECREE/LAW OF AUGUST 26, 1975, TERRORIST ACTIONS MUST BE JUDGED ON THE BASIS OF A SUMMARY PROCEDURE
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UNLESS THE MILITARY COURT DECIDES TO THE CONTRARY. THE SUMMARY PROCEDURE WAS ONLY APPLIED IN THE PLENARY OF ONE OF THE TRIALS AGAINSTMEMBERS OF THE FRAP IN MADRID AND IN THE TRIAL OF PAREDES MINOT IN BARCELONA. THE ANTI-TERRORIST LAW OF AUGUST 26, 1975 WAS NOT RETROACTIVE IN ITS EFFECTS ON SENTENCES.

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PAGE 01 MADRID 07037 02 OF 02 101651Z

43
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SP-02 SS-15 USIA-06 SCCT-01 SAM-01 /077 W
---------- 068293
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FM AMEMBASSY MADRID
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INFO AMEMBASSY LISBON
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LIMITED OFFICIAL USE SECTION 2 OF 2 MADRID 7037

7. TRIAL INCIDENTS: TRIAL INCIDENTS RESULTED ON ONE
OCCASION IN THE EXPULSION OF DEFENSE LAWYERS WHO DELIBERATELY
PROVOKED THEM IN AN ATTEMPT TO POLITICIZE THE TRIAL. THEIR
EXPULSION WAS LEGAL OWING TO THE STIPULATION IN ARTICLE 18
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PAGE 02 MADRID 07037 02 OF 02 101651Z

OF THE ANTI-TERRORIST DECREE/LAW OF AUGUST 26, 1975.
ALTERNATE DEFENSE LAWYERS WERE NAMED FOR THE DEFENSE SO
THAT AT NO TIME WAS EXISTING PROCEDURAL LEGISLATION

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VIOLATED NOR THE RIGHT OF DEFENSE NOT RESPECTED.

8. THE CRIMES COMMITTED BY THE FIVE EXECUTED TERRORISTS AND THE PROOF OF THEIR CULPABILITY.

A. JOSE UMBERTO BAINA - THE CONFESSED PEPETRATOR OF THE ASSASSINATION OF A POLICEMAN. THER WERE BALLISTIC PROOFS AND ALL THE OTHER ACCUSED IN THIS CIRME IDENTIFIED BAINA AS THE AUTHOR.

B. RAMON GARCIA SANZ - ASSASSIN OF A CIVIL GUARD LIEUTENANT. PROOF INCLUDED BALLISTIC TEST AND TESTIMONY OF THE WORKSHOP WHERE THE ACCUSED ADMITTED THAT HE HAD A SHOTGUN SAWED OFF.

C. JUAN PAREDES MINOT - ASSASSIN OF A POLICEMAN. PROOF INCLUDED THREE STATEMENTS BY THE ACCUSED BEFORE THE INVESTIGATING JUDGE. MFA STATEMENT NOTES THAT PAREDAS MINOT NEVER MENTIONED HAVING RECEIVED BAD TREATMENT. TWO POLICEMEN RECONGIZED HIM AS THE ASSASSIN DURING CAREFULLY PREPARED POLICE LINEUPS, WHERE THERE WERE GUARANTEES AGAINST COLLUSION BETWEEN THE POLICE AND THE PROSECUTION. STATEMENTS OF OTHER TERRORISTS ARRESTED IN BARCELONA POINTED TO PAREDES AS THE AUTHOR OF THE CRIME.

D. ANGEL OTAEGUI - HE MADE POSSIBLE THE ASSASSINATION OF A CIVIL GUARD MEMBER BY PROVIDING "NECESSARY COOPERATION". THE MURDERER HIMSELF, GAIMENDIA, IDENTIFIED OTAEGUI WHO WAS ALSO IDENTIFIED BY A MARRIED COUPLE WHO GAVE BOTH TERRORISTS REFUGE.

E. JOSE LUIS SANCHEZ BRAVO - SNACHEZ BRAVO SELECTED THE VICTIM, A POLICE LIEUTENANT, DREW UP THE PLAN FOR THE HOMICIDE AND BOUGHT THE WEAPON AND SELECTED THE DATE. PROOF OF HIS CULPABILITY CONSISTS OF DOCUMENTARY EVIDENCE AND DISCREPANCIES IN HIS OWN TESTIMONY WITH RESPECT TO HIS WHEREABOUTS AT THE TIME OF THE CRIME.

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9. ANNEXES TO THE MFA NOTE LIST THE DATES AND NAMES OF VICTIMS OF TERRORIST ACTIONS SINCE APRIL 1974. ALTOGETHER 22 POLICEMEN AND 14 CIVILIANS WERE KILLED THROUGH OCTOBER 1, 1975; 17 POLICEMEN AND 7 CIVILIANS WERE WOUNDED DURING THE SAME PERIOD.

10. THE MEMORANDUM IS PERSUASIVE IN EXPLAINING THAT SPAIN HAS FOLLOWED THE LETTER OF ITS LAWS, LESS SO IN ADDRESSING THE QUESTION OF WHETHER ITS ANTI-TERRORIST LAWS AND PROCEDURES PROVIDE GUARANTEES OF A FAIR TRIAL.

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Disposition Authority: CunninFX
Disposition Case Number: n/a
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